

The Honorable Mary Jo Heston  
Hearing Date: September 9, 2021  
Hearing Time: 9:00 a.m.  
Response Date: September 2, 2021  
Chapter 7  
Location: Tacoma

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

DEAN and KELSEY WALTON,  
  
Debtors.

No. 21-40336

RESPONSE AND OBJECTION TO  
MOTION TO CONVERT

COMES NOW the Chapter 7 Trustee, by and through the undersigned attorney, and in response and objection to the debtors' Motion for Order Converting Chapter 7 Case to Chapter 13, states as follows:

**I. BACKGROUND FACTS**

The debtors filed the present Chapter 7 Bankruptcy Petition on February 26, 2021. Prior to the filing of the Bankruptcy Petition, the debtors owned real property located at 9418 Taylor St E, Edgewood, WA (Pierce County APN 0420091115) (the "Real Property"). The Real Property was unencumbered at the time of the debtors' acquisition on or about June 21, 2017. The debtors transferred the Real Property to Mrs. Walton's parents, Charles and Tina Hollis, for no consideration except "love and affection" [\$0.00] on or about February 13, 2018 (the "Transfer"). At the time of the Transfer of the Real Property by the debtors to the Hollises, the property had a tax assessed value of \$186,700.00 and was still unencumbered. At the time of the Transfer, the debtors were insolvent, with obligations in the amount of at least \$30,000.00 in student loan debts incurred between 2010 and 2011. As the debtors received nothing in

RESPONSE AND OBJECTION TO MOTION TO CONVERT - 1

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1 exchange for the Transfer, the Trustee contends that the debtors did not receive reasonably  
2 equivalent value in exchange for the Transfer. The debtors did not disclose this transfer in their  
3 bankruptcy schedules, but it was discovered by the Trustee in the course of her investigation.  
4 The Trustee filed an adversary complaint to avoid the Transfer pursuant to the Washington  
5 Fraudulent Transfer Act, RCW 19.40, on August 13, 2021 (see Adv. No. 21-04041).  
6

## 7 **II. DISCUSSION**

8 The debtors have no disposable income, and in fact operate at a deficit of \$300.60 per  
9 month (see Docket No. 1, page 45, number 23c). Accordingly, the debtors can truly have no  
10 intention or ability to repay their creditors, and have filed the motion to convert to attempt to  
11 protect debtor Kelsey Walton's parents, the Hollises, and divert the prosecution of the adversary  
12 complaint. The debtors have listed over \$200,000.00 in unsecured claims and clearly have no  
13 ability to confirm a Chapter 13 Plan that will pay creditors at least the amount they would be  
14 paid in the present Chapter 7. Rather, it appears the motion to convert to Chapter 13 filed on  
15 August 2, 2021 is in response to the Trustee's July 28, 2021 demand letter to the Hollises in an  
16 effort to avoid the Chapter 7 Trustee's prosecution of the avoidance claims against the Hollises.  
17 A copy of the Trustee's July 28, 2021 letter to the Hollises is attached to the declaration of the  
18 Trustee as Exhibit 1. Under such circumstances, the motion is not filed in good faith, and the  
19 debtors are not amongst the class of 'honest but unfortunate debtors' that possess a right to  
20 convert. *Marrama v. Citizens Bank*, 549 U.S. 365, 374 (2007).  
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## 23 **III. SUMMARY**

24 This motion is not filed in 'good faith' with any desire to repay creditor claims of over  
25 \$200,000.00, with no disposable income to fund the same. This motion is simply an attempt to  
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1 wrest the case from the Chapter 7 Trustee now that the undisclosed transfer to insiders has been  
2 discovered. Should the Court allow conversion, it should only be allowed with no ability to  
3 dismiss the same, rather than re-conversion to Chapter 7.

4  
5 DATED this 2<sup>nd</sup> day of September, 2021.

6  
7 /s/ Kathryn A. Ellis

Kathryn A. Ellis, WSBA #14333

Attorney for Trustee

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